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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,793	05/30/2001	Stephen Joseph Vesper	VESPER1	5682
1444	7590	02/05/2009	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			DUFFY, PATRICIA ANN	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* STEPHEN JOSEPH VESPER

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Application 09/866,793  
Technology Center 1600

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Mailed: February 5, 2009

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Before VASCO S. HARPER, *Paralegal Specialist*  
HARPER, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 30, 2008. A review of the application has revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

DECLARATION

Appellant(s) filed a declaration by Stephen J. Vesper (the inventor), on July 8, 2002. The declaration is also listed in the Evidence Appendix and copy thereof is included in the Appeal Brief filed August 11, 2008. There is no indication on the record that the Examiner has considered the declaration as we find no specific mention of same anywhere in the record. “All admitted affidavits and declarations are [to be] acknowledged and commented upon by the examiner in his or her next succeeding action.” *MPEP 715.09*. Proper consideration of the July 8, 2002 declaration is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- a.) for proper consideration of the declaration filed July 8, 2002, and
- b.) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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